IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.461 OF 2005

WITH

CIVIL APPLICATION NO.791 OF 2005

WITH

CIVIL APPLICATION NO.1811 OF 2005

Chandulal Mohamad Attar ...Appellant

Versus

Shamshuddin Mohammad Attar & Ors. ...Respondents

.....

Mr.S.S.Patwardhan for Appellant.

Mr.T.D.Deshmukh for Respondents 1A, 1B & 2 to 5.

.....

CORAM: A.M.KHANWILKAR, J.

JANUARY 13, 2006.

P.C.

1. Heard.

2. The only grievance made in the present Second Appeal is that the Appellate Court committed manifest error in not relying on document Exhibit

74 on the specious reasoning that it was inadmissible in evidence, being unregistered document.

3. The argument seems to be attractive, but is devoid of merits. The Trial Court, while considering the said document in Para 13 rightly held that the Appellant cannot be permitted to blow hot and cold. The plaintiff has disowned the execution of document Exhibit 74. If that was the stand of the Plaintiff before the Court in some proceedings, it is not open to the Plaintiff to rely on the same document to contend that the property has been partitioned and come to the exclusive share of the Plaintiff. Besides, two courts below have considered the document and have in my opinion, rightly found that the said document was nothing but partition deed. Even the nomenclature of the document discloses that it is a partition deed. If it is so, registration of said document was imperative in terms of Section 17 of the Registration Act and as the same was unregistered, could not be relied in evidence being inadmissible document. Court below has rightly

placed reliance on the decision of the Andhra Pradesh High Court in the case of **A.Krishna & Anr. vs. A.Arjun Rao & Anr. reported in AIR 2004 A.P. 502** to support this contention. Hence, no substantial question of law is raised. Dismissed.

A.M.KHANWILKAR, J.